IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Bail Appl..No. 5643 of 2007()

CC.122/2007 of J.M.F.C.-II,NEYYATTINKARA
CRIME NO.288/05 OF POZHIYOR POLICE STATION

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PETITIONER/2ND ACCUSED

GLADY GRACE, AGED 38 YEARS,
D/O GRACE, CARMEL HOUSE, KANTHANNOOR DESOM,
KARODE VILLAGE.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING SUB INSPECTOR OF POLICE,
POZHIYOR PLICE STATION.

BY P.P. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5643 OF 2007

Dated this the 20th day of September, 2007

ORDER

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Secs.465 and 468 of the IPC. Final report has been filed. Cognizance has already been taken. The F.I.R. was filed as early as in 2005. The final report was filed in 2006. The petitioner was shown as absconding in the final report filed. Taking into account that inputs at the initial stage, a warrant of arrest has been issued against the petitioner/2nd accused by the learned Magistrate. The petitioner prays that anticipatory bail may, in these circumstances, be granted to the petitioner.

2. According to the petitioner, the conduct of the police showing her as absconding and the action on the part of the learned Magistrate mechanically accepting the same and

issuing the non-bailable warrant of arrest is most unjustified. The petitioner – a woman, was the President of the local Panchayat. She had continued as a member also. In these circumstances, the allegations that she was absconding is most unkind and harsh. The learned Magistrate should not have meekly and mechanically acted on such report made in the final report. According to the petitioner, she is absolutely innocent. Her absence was not wilful; but was due to reasons beyond her control. The petitioner, in these circumstances, wants to surrender before the learned Magistrate and seek regular bail. The petitioner apprehends that her application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. It is, in these circumstances, that the petitioner has come to this Court for a direction to the learned Magistrate to release her on bail when she appears before the learned Magistrate.

3. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that,

sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which she could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

6. In the peculiar facts and circumstances of this case, there shall be a direction that the warrant of arrest issued

against the petitioner shall not be executed till 1/10/2007. She shall, in the meantime, appear before the learned Magistrate and seek regular bail.

7. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge